

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 117 of 1994

In

SPECIAL CIVIL APPLICATION NO. 389 OF 1994

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed :
to see the judgements? No
 2. To be referred to the Reporter or not? No :
 3. Whether Their Lordships wish to see the fair copy :
of the judgement? No
 4. Whether this case involves a substantial question :
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge? No :

RAMANBHAI DHULABHAI BAROT

Versus

STATE OF GUJARAT

Appearance:

MR MUKESH R SHAH for Appellant

MR ST MEHTA, AGP for Respondents

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE P.B.MAJMUDAR

Date of decision: 02/12/1999

ORAL JUDGEMENT

(Per : Panchal, J.)

This appeal, which is filed under Clause 15 of
the Letters Patent, is directed against judgment dated

March 11, 1994 rendered by the learned Single Judge in Special Civil Application No. 389/94, by which prayer made by the respondents to give all benefits of a permanent employee to him with effect from January 1, 1984 is rejected on the ground that the appellant has alternative remedy to move the Industrial Tribunal under Rule-31 of the Industrial Disputes (Gujarat) Rules, 1966.

2. The appellant is serving as a Rojamdard Peon with the respondent no.4 i.e. Assistant Director of Agriculture, Irrigation Project, Lunavada, District : Panchmahals since March 15, 1980. The appellant is a member of Agriculture and Rural Labour Association, Petlad. According to the Association, the Rojammdars working in Agriculture Department, Gandhinagar were entitled to the benefits of regularisation from January 1, 1984, as they were employed as rojamdars since long. The association therefore, raised a dispute regarding regularisation in service of the rojamdars. The said dispute was referred to the Industrial Tribunal, Gujarat, Ahmedabad for adjudication. It was numbered as Reference (IT) No.166/87. The Agriculture and Rural Labour Association, Petlad submitted a statement of claim at Exh.4. Along with the statement of claim, a list showing the names of Rojamdars and their respective date of joining service was appended. However, by mistake in the said list it was mentioned that the appellant had joined service as Rojamdard on March 15, 1987, though in fact he had joined service on March 15, 1980. The name of the appellant was shown at serial no.45 in the said list. The Industrial Tribunal took into consideration the evidence led by the parties and concluded that those who had completed 3 years of service as Rojamdard, were entitled to benefit of regularisation in service. A copy of award rendered by the Industrial Tribunal is produced by the appellant at Exh.C to the main petition. Because of the obvious mistake committed by the Agriculture and Rural Labour Association, Petlad while submitting the list along with the statement of claim, the appellant was denied benefit of regularisation by the Industrial Tribunal. Therefore, he made an application dated July 12, 1991 to the Registrar, Industrial Tribunal, Gujarat State, Ahmedabad stating that he had joined service as a Rojamdard Peon with respondent no.4 on March 15, 1980, but by mistake it was mentioned in the list submitted by Agriculture and Rural Labour Association, Petlad that he had joined service on March 15, 1987 and, therefore, after correcting the date, he should be accorded benefit of the award rendered by the Industrial Tribunal on April 17, 1990. A copy of the said application is produced by him collectively at Exh.D to the main petition. The

appellant also forwarded a copy of the application dated July 12, 1991 to respondent no.4, who on receipt of the same informed the Joint Director of Agriculture, Irrigation Project, Nadiad, District : Kheda by a letter dated July 18, 1991 that the appellant had joined service as a Rojamdard on March 15, 1980, but by mistake it was mentioned in the award of the Industrial Tribunal that he had joined service as Rojamdard on March 15, 1987 and, therefore, appropriate representation should be made before the Industrial Tribunal with reference to hearing which might take place pursuant to the application dated July 12, 1991 submitted by the appellant to the Registrar, Industrial Tribunal, Gujarat State, Ahmedabad. A copy of the letter dated July 18, 1991 addressed by respondent no.4 to respondent no.2 is also produced on the record of the petition by the appellant. The Registrar, Industrial Tribunal by a communication dated July 25, 1991 informed the appellant that after rendering the award, the Industrial Tribunal has become functus officio and has no power to amend/modify the award and, therefore, the appellant should initiate appropriate legal proceedings after obtaining legal advice. A copy of the said communication is produced by the appellant at Exh.E to the main petition. As respondent no.4 had addressed letter dated July 18, 1991 to respondent no.2 to make appropriate representation before the Industrial Tribunal in view of application dated July 12, 1991 submitted by the appellant, respondent no.2 i.e. Joint Director of Agriculture, Irrigation Project, Nadiad, District : Kheda submitted an application dated May 27, 1991 to the Industrial Tribunal, Gujarat State, Ahmedabad stating that the appellant had joined service as Rojamdard on March 15, 1980 and not on March 15, 1987 as mentioned in the award and, therefore, appropriate action should be taken by the Tribunal in this matter. A copy of the said communication is also produced by the appellant along with the petition. However, in view of communication dated July 25, 1991 addressed by the Registrar, Industrial Tribunal, Gujarat State, to the appellant, the appellant instituted Special Civil Application No.389/94 and prayed the Court to issue a writ of mandamus or any other appropriate writ or order directing the respondents to give all the benefits of permanent employee to him with effect from January 1, 1984 and give status of permanent employee to him with effect from January 1, 1984. The appellant is permitted to amend the original petition during pendency of the appeal and prayer to issue a writ of mandamus or any other appropriate writ, direction or order to quash and set aside the judgment and award dated April 17, 1990 passed by the Industrial Tribunal, Ahmedabad, in Reference (IT) No.166/87 in so

far as it denied the benefits of regular pay-scale etc. is also claimed by him. The learned Single Judge before whom the petition was placed for admission hearing, was of the opinion that the reliefs sought for in the petition can be claimed by the appellant from the Industrial Tribunal under Rule 31 of the Industrial Disputes (Gujarat) Rules, 1966. The learned Single Judge, therefore, rejected the petition summarily on the ground that the appellant had not resorted to alternative remedy available to him under the said Rule, by judgment dated March 11, 1994, which has given rise to the present appeal.

3. Mr.M.R.Shah, learned Counsel for the appellant submitted that in view of the obvious mistake which was committed by the Industrial Tribunal while rendering the award, the petition ought to have been accepted by the learned Single Judge.It was pleaded that as per the communication dated July 25, 1991 addressed by the Registrar, Industrial Tribunal, Gujarat State, Ahmedabad, the Tribunal had become functus-officio after rendering the award and had no jurisdiction to modify or amend the award and, therefore, the petition should not have been rejected on the ground that the appellant had failed to avail of alternative remedy of claiming this relief from the Industrial Tribunal under Rule 31 of the Industrial Disputes (Gujarat) Rules, 1966. What was emphasised by the learned Counsel for the appellant was that the fact that a mistake had crept in while delivering the award of the Industrial Tribunal is admitted by the respondents and, therefore, the appeal should be allowed and that part of the award by which benefit of regularisation is denied to the appellant, should be set aside.

4. Mr. S.T.Mehta, learned A.G.P. fairly stated at the bar that it is the consistent stand of all the respondents that the appellanmt had joined service as Rojamdard with respondent no.4 on April 15, 1980 and, therefore, the prayer to quash and set aside that part of the award dated April 17, 1990 passed by the Industrial Tribunal by which the appellant is denied the benefit of regularisation should be set aside.

5. We have heard the learned Counsel for the parties at length. We have also taken into consideration the documents which are produced on the record of the petition. It is not in dispute that the Agriculture and Rural Labour Association, Petlad had submitted a statement of claim before the Industrial Tribunal and appended a list of Rojamdars with reference to whom a

prayer for regularisation was made. In the said list it was mentioned that the appellant had joined service as Rojamdar on March 15, 1987. The name of the appellant was mentioned in the list at serial No.45. The names of Rojamdars were mentioned according to their respective dates of joining service. At serial No.44, name of one Shashikant R.Parmar was mentioned indicating that he had joined service as Rojamdar on March 1980. At serial No.46 in the said list, name of Mr. Thakorbhai G.Patel was mentioned and it was indicated that he had joined service as Rojamdar on March 19, 1980, but while showing the name of the appellant at serial No.45, it was mentioned in the said list that he had joined service as Rojamdar on March 15, 1987. This is an obvious mistake because if the appellant had joined service on March 15, 1987, then his name would not have figured between the names of Mr. Shashikant R. Parmar and Mr.Thakorbhai G.Patel. Even the letter dated July 18, 1991 addressed by respondent no.4 to respondent no.2 indicates that the appellant had joined as Rojamdar on March 15, 1980 and not on March 15, 1987 as is mentioned in the award of the Industrial Tribunal. The letter dated May 27, 1991 addressed by the Joint Director, Agriculture (Irrigation), Nadiad to the Tribunal makes it more than clear that the appellant had joined service as Rojamdar on March 15, 1980 and not on March 15, 1987 as was mentioned in the award of the Tribunal. Under the circumstances, we are of the opinion that in view of the obvious mistake committed while rendering the award, the application dated July 12, 1991 made by the appellant to the Registrar, Industrial Tribunal ought to have been accepted and appropriate modification in the award ought to have been made. It is incorrect to say that once an award is made, the Industrial Tribunal becomes functus officio and has no jurisdiction to correct error apparent on the face of the record. The Registrar, Industrial Tribunal should not have directed the appellant to initiate other legal proceedings and should have entertained the application dated July 12, 1991 submitted by the appellant. Having regard to the facts of the case, we are of the opinion that the prayer made by the appellant to quash and set aside that part of the award dated April 17, 1990 rendered by the Industrial Tribunal, Ahmedabad in Reference (IT) No.166/87 by which he is denied the benefit of regularisation, deserves to be set aside.

For the foregoing reasons, the appeal succeeds. The impugned order rendered by the learned Single Judge is set aside. Special Civil Application No. 389/94 partly succeeds. That part of the judgment and award

dated April 17, 1990 rendered by the Industrial Tribunal, Ahmedabad, in Reference (IT) No.166/87 which denies the benefit of regularisation to the appellant, is hereby set aside and quashed. It is held that the appellant is entitled to benefits of regularisation in terms of award dated July 17, 1990 rendered by the Industrial Tribunal, Gujarat State, Ahmedabad in Reference (IT) No.166/87. The communication dated November 8, 1993 produced by the appellant at Annexure-F to the petition indicates that the award made by the Industrial Tribunal on April 17, 1990 in Reference (IT) No.166/87 is already implemented with reference to other employees. Therefore, the respondents are directed to implement the said award with reference to the appellant also immediately and shall accord all benefits flowing from the said award to the appellant as early as possible and preferably within one month from the date of receipt of the writ. The appeal accordingly, stands allowed, with no order as to costs.

(patel)